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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re B.S., a Person Coming Under the  
Juvenile Court Law.

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LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.S.,

Defendant and Appellant.

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B211210

(Los Angeles County  
Super. Ct. No. CK72813)

APPEAL from an order of the Superior Court of Los Angeles County,  
Robert Stevenson, Referee. Reversed and remanded.  
Carrie Clark for Defendant and Appellant.  
Jacklyn K. Louie, Deputy County Counsel, for Plaintiff and Respondent.

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R.S. (hereafter, father or R.S.) appeals the juvenile court's August 20, 2008 jurisdictional/dispositional order declaring his daughter B.S. a dependent child of the court pursuant to Welfare and Institutions Code section 300, subdivision (b).<sup>1 2</sup>

Father contends the juvenile court erred in finding he was an alleged/biological father and that the court failed to follow proper procedure which would have enabled him the opportunity to elevate his paternity status.

The Los Angeles County Department of Children and Family Services (Department) concedes the juvenile court should have provided father with a JV-505 form consistent with section 316.2, subdivision (b) and does not oppose a limited remand for that purpose. We accept the Department's concession and reverse and remand for further proceedings.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The family came to the Department's attention in April 2008, when B.S.'s mother and B.S.'s newborn half-brother, G.V., tested positive for cocaine upon G.V.'s birth.

On May 2, 2008, the Department filed a dependency petition on behalf of B.S. and her half-siblings. (Welf. & Inst. Code, § 300.) The petition alleged mother's drug abuse rendered her incapable of providing regular care for the children. The petition named R.S. as B.S.'s alleged father.

A detention hearing was held on May 2, 2008. R.S. did not appear and was not represented by counsel. Mother stated R.S. is the father of B.S. and that mother was not married to him at the time B.S. was born; however, R.S.'s name is on B.S.'s birth certificate and mother was living with him when B.S. was born. Mother added, R.S. treated the child "like his own." Mother, R.S. and B.S. all lived

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code, unless otherwise specified.

<sup>2</sup> In a section 300 proceeding, the order entered at the dispositional hearing is a final judgment and is appealable pursuant to section 395. (*In re Daniel K.* (1998) 61 Cal.App.4th 661, 666-667.)

together until R.S. was incarcerated in 2000, at which time B.S. was two years old. B.S. has visited him in jail.

At the May 2, 2008 detention hearing, the court found R.S. was “the alleged biological father[]” of B.S.

At the jurisdictional/dispositional hearing on August 20, 2008, the juvenile court declared the children, including B.S., dependents of the court under Welfare and Institutions Code section 300, subdivision (b). With respect to R.S., who was not present and who was not represented by counsel, the court found he had been duly notified of the jurisdiction and disposition hearing. The court stated it was denying reunification services for R.S. on the ground he was incarcerated and “there’s no possibility that he can reunite with the children during the allotted time . . . .” Contrary to the oral ruling, the minute order states reunification services were denied on the ground R.S. was merely an alleged father.

R.S. filed a timely notice of appeal from the August 20, 2008 order.

### **CONTENTIONS**

R.S. contends the juvenile court erred in finding he was an alleged/biological father, and that he was prejudiced by the court’s failure to follow proper procedure in affording him an opportunity to elevate his paternity status.

### **DISCUSSION**

#### *1. Noncompliance with statutory notice requirements compels reversal.*

##### *a. Statutory scheme.*

Section 316.2 provides in relevant part: “(a) At the detention hearing, or as soon thereafter as practicable, the court shall inquire of the mother and any other appropriate person as to the identity and address of all presumed or alleged fathers. . . . The inquiry shall include at least all of the following, as the court deems appropriate: [¶] (1) Whether a judgment of paternity already exists. [¶] (2) Whether the mother was married or believed she was married at the time of conception of the child or at any time thereafter. [¶] (3) Whether the mother was cohabiting with a man at the time of conception or birth of the child. [¶]

(4) Whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy. [¶] (5) Whether any man has formally or informally acknowledged or declared his possible paternity of the child, including by signing a voluntary declaration of paternity. [¶] (6) Whether paternity tests have been administered and the results, if any. [¶] (7) Whether any man otherwise qualifies as a presumed father pursuant to Section 7611, or any other provision, of the Family Code.”

If, “after the court inquiry, one or more men are identified as an alleged father, *each alleged father shall be provided notice at his last and usual place of abode by certified mail return receipt requested alleging that he is or could be the father of the child. The notice shall state that the child is the subject of proceedings under Section 300 and that the proceedings could result in the termination of parental rights and adoption of the child. Judicial Council form Paternity-Waiver of Rights (JV-505) shall be included with the notice.*” (§ 316.2, subd. (b), italics added.)

b. *Noncompliance with statutory notice provision requires reversal.*

As indicated, at the detention hearing, the juvenile court was advised that R.S. is the father of B.S., his name is on B.S.’s birth certificate, R.S. lived with B.S. for the first two years of her life, and R.S. treated the child “like his own.”

This showing triggered the notice requirements of section 316.2, subdivision (b), including service upon father of form JV-505. That did not occur.

The Department concedes the statutory procedure was not followed and it does not oppose a remand for that limited purpose. Having reviewed the record, we accept the Department’s concession and reverse and remand for further proceedings.

### **DISPOSITION**

The juvenile court's order declaring R.S. "the alleged biological father" of B.S., and denying him reunification services, is reversed. The matter is remanded to the juvenile court with directions to comply with the notice requirements of section 316.2, subdivision (b), to make any new and appropriate paternity findings, and to conduct further proceedings not inconsistent with this opinion.

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KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.